

1 HONORABLE RONALD B. LEIGHTON
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JAY L LAMB, SHARI D HULTBERG,

12 Plaintiffs,

13 v.

14 CHICAGO TITLE INSURANCE CO,
15 MORTGAGE ELECTRONIC
16 REGISTRATION SYSTEMS INC, et al.,

17 Defendants.

CASE NO. C13-6063 RBL

ORDER

17 THIS MATTER is before the Court on Defendant LSI Title Agency, Inc.'s motion to
18 dismiss (Dkt. #5), LSI's motion to deny joinder of non-diverse parties (Dkt. #16), and Plaintiffs'
19 motion to remand (Dkt. #12). Plaintiffs allege that a 2009 non-judicial foreclosure sale of real
20 property that they owned is void because the foreclosing entity did not have authority to
21 foreclose on the property. They seek to invalidate the sale and request monetary damages.
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23 **I. BACKGROUND**

24 This is not the first time that Plaintiffs have sought a court order invalidating the 2009-
25 foreclosure sale. On November 18, 2010, Plaintiffs filed a "Complaint for Quiet Title" in this
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1 Court alleging that the named defendants had conducted an improper non-judicial foreclosure on
2 the same real property at issue in the current case. *See* Case No. 10-cv-05856-RJB. The
3 defendants in that action were Chicago Title Insurance Co., LSI Division; Mortgage Electronic
4 Registration Systems, Inc. (MERS); The Bank of New York Mellon Trust Company; and GMAC
5 Mortgage, LLC. Plaintiffs asserted claims under numerous federal statutes, the Washington
6 Deed of Trust Act, and the Washington Consumer Protection Act. Among other things, they
7 sought rescission of the foreclosure sale and statutory damages, including damages under the
8 Washington Consumer Protection Act. Judge Bryan concluded that all of Plaintiffs' claims were
9 meritless and dismissed them with prejudice. Plaintiffs did not appeal.

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11 Plaintiffs filed their complaint in this action in Washington State court on November 12,
12 2013. Plaintiffs again alleged that the foreclosure sale violated the Washington Deed of Trust
13 Act and Washington Consumer Protection Act. As before, Plaintiffs sought to invalidate the
14 foreclosure sale and monetary damages under the CPA. Plaintiffs amended their complaint eight
15 days later; the first-amended complaint did not add any defendants or change any of Plaintiffs'
16 legal theories.

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18 On December 12, 2013, MERS removed the action to this Court. LSI moved to dismiss
19 Plaintiffs' claims one week later. LSI contends that Plaintiffs' claims are barred by *res judicata*
20 and also notes that Plaintiffs did not join all of the required parties because the current property
21 owners are not named defendants.

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23 In response to LSI's motion, and without first obtaining leave from the Court, Plaintiffs
24 filed an amended complaint on December 30, 2013 (Dkt. #10 and refilled as Dkt. #11). The

1 second-amended complaint¹ adds Christopher Olsen, Dana Olsen, and the Bank of New York
2 Mellon Trust Company as defendants. The Olsens currently own the property and are
3 Washington residents. Plaintiffs also removed their CPA claims from the second-amended
4 complaint and, instead, asserted breach of contract and negligence claims. Plaintiffs then moved
5 to remand the action to state court, claiming that their amendments divested this Court of its
6 diversity jurisdiction. So, the Defendants moved to deny Plaintiffs' attempt to join the Olsens or,
7 alternatively, to strike the second-amended complaint.

9 **II. DISCUSSION**

10 **A. Jurisdiction**

11 It is undisputed that the Court had diversity jurisdiction when this case was removed.
12 Plaintiffs contend that they destroyed complete diversity and stripped this Court of its subject
13 matter jurisdiction by adding the Olsens as defendants after removal. Plaintiffs claim that Fed.
14 R. Civ. P. 15(a)(1) gives them the right to amend their complaint once as a matter of course, so
15 they did not need to get the Court's permission before amending.

16 Rule 15(a)(1) allows a party to amend its pleading *once* without first obtaining
17 permission from the court or the opposing party. Plaintiffs fail to explain why their amendment
18 before removal does not count as their one amendment under Rule 15(a)(1). Moreover, Plaintiffs
19 do not address 28 U.S.C. § 1447(e), which gives courts discretion to deny joinder of parties after
20 removal that would destroy subject matter jurisdiction. Even if Plaintiffs had not already used
21 their amendment as a matter of course, § 1447(e) controls over Rule 15(a)(1) when the two
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27 ¹ Plaintiffs' titled their complaint "First Amended Complaint . . ." even though they had
28 already amended once before removal.

1 conflict. See 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice &*
 2 *Procedure* § 1477 (3d ed. 2013); *see also Bevels v. Am. States Ins. Co.*, 100 F.Supp.2d 1309,
 3 1312-13 (M.D. Ala. 2000); *Winner's Circle of Las Vegas, Inc. v. AMI Franchising, Inc.*, 916
 4 F.Supp. 1024 (D. Nev.1996); *Whitworth v. Bestway Transportation Inc.*, 914 F.Supp. 1434
 5 (E.D.Tex.1996); *Horton v. Scripto-Tokai Corp.*, 878 F.Supp. 902 (S.D.Miss.1995); *Lyster v.*
 6 *First Nationwide Bank Financial Corp.*, 829 F.Supp. 1163, 1165 (N.D.Cal.1993).

8 Nevertheless, Plaintiffs' amendments should be allowed "if justice so requires," or if a
 9 judgment would be deficient without the Olsens as named-defendants. Other than arguing that
 10 they had an absolute right to amend, Plaintiffs contend that they should be allowed to add the
 11 Olsens as parties because LSI's motion to dismiss was based, in part, on their failure to do so.
 12 The Olsens are arguably necessary parties because their interest in the property would be
 13 jeopardized if Plaintiffs prevail on their claims and obtain the relief that they have requested.
 14 But, their interests are only implicated if the other defendants are found to be liable. Thus, if
 15 Plaintiffs' claims against the other defendants are barred, then there is no possibility that the
 16 other defendants are liable and there is also no possibility that the Olsens' interests will be
 17 jeopardized. Because claims against the other defendants can be resolved without the Olsens'
 18 involvement, neither the Plaintiffs nor the Olsens will be prejudiced if the Olsens are not named-
 19 defendants.

21 Additionally, even Plaintiffs acknowledge that LSI's motion primarily argued that the
 22 claims should be dismissed because they are barred by *res judicata*; LSI raised the Rule 19
 23 failure-to-join issue only as an afterthought. Indeed, the timing of Plaintiffs' second-amended
 24 complaint demonstrates their not-so-subtle attempt to avoid—or, more accurately, delay—the
 25 preclusive effect of their prior unsuccessful efforts. Although leave-to-amend should be given
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1 freely, in this case, justice requires that Plaintiffs not be allowed to amend their complaint.
 2 Accordingly, Plaintiffs' amendments are not allowed and their second-amended complaint (Dkt.
 3 #s 10 and 11) is **STRICKEN**. This Court has jurisdiction to adjudicate Plaintiffs' claims.
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5 **B. Plaintiffs' Claims are Barred by *Res Judicata***
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7 Plaintiffs contend that *res judicata* does not apply because Plaintiffs were not represented
 8 by counsel during the prior action, have learned additional facts after their prior action was
 9 dismissed, and after their prior action was dismissed the Washington Supreme Court issued three
 10 opinions interpreting the Washington Deed of Trust Act that they believe support their claims.
 11 None of these arguments factor into the application of *res judicata*.

12 The doctrine of *res judicata* precludes re-litigation of claims that were raised in a prior
 13 action or could have been raised in a prior action. *W. Radio Servs. Co., v. Glickman*, 123 F.3d
 14 1189, 1192 (9th Cir. 1997). An action is barred by *res judicata* when an earlier suit: (1)
 15 involved the same claim or cause of action as the later suit; (2) involved the same parties; and (3)
 16 reached a final judgment on the merits. *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987
 17 (9th Cir. 2005).

18 Here, Plaintiffs' prior action against these same defendants was dismissed with prejudice.
 19 The prior claims and the claims asserted in this action are identical in substance. They are based
 20 on the same nucleus of facts, rely on the same evidence, seek redress under the same statutes,
 21 and request the same relief. Plaintiffs' claims could have been, or were, brought in the prior
 22 action. The prior action was against all of the named-defendants in this case and was dismissed
 23 with prejudice. Plaintiffs' claims are, thus, precluded by *res judicata*. LSI's motion to dismiss is
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GRANTED.
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III. CONCLUSION

Plaintiffs' amended complaint that they first filed as Dkt. #10 is STRICKEN. Plaintiffs' claims are precluded by *res judicata*, so LSI's motion to dismiss is **GRANTED**. The prior case's preclusive effect applies to all of the defendants named in that case. Accordingly, even though MERS did not join in LSI's motion, Plaintiffs' claims against MERS are also barred by *res judicata*, so they are also **DISMISSED**.

Dated this 10th day of March, 2014.

Ronald B. Leighton

**RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE**